

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DONOHOE, et al.)	CASE NO.: 1:20-cv-00050
)	
)	JUDGE DAN AARON POLSTER
Plaintiffs,)	
)	
)	
-v-)	<u>JOINT STATUS REPORT</u>
)	
CITY OF CLEVELAND, OHIO)	
)	
Defendant.)	
)	

Pursuant to the Court's Order of March 12, 2020, the parties submit the following status report in advance of the May 18, 2020 Status Conference.

In accordance with the Court's Order, between March 12 and March 19, 2020, counsel for Defendant City of Cleveland and counsel for Plaintiffs negotiated a Protective Order which was filed and approved by the Court on March 19, 2020.

On March 19, 2020, in compliance with the Court's directive during the March 12, 2020 Case Management Conference and subject to the Protective Order, counsel for Defendant provided Plaintiffs' counsel with the test materials from the 2017 City of Cleveland Division of Fire Captain promotional examination to share with Plaintiffs' expert in order to assist the parties in complying with the Court's Order. These materials included the written and oral portions of the examination itself, as well as the test preparation materials provided to each candidate.

On April 1, 2020, after sharing these documents with Plaintiffs' expert, Dr. Kyle Brink, Plaintiffs' counsel provided Defense counsel with a list of additional documents related to the 2017 examination that Dr. Brink requested to review to comply with the Court's Order. This list

included nearly thirty categories of additional documents and/or information. The City provided Plaintiffs' counsel with documents responsive to Dr. Brink's request on April 27, 2020 and supplemented its response with additional documents on May 8, 2020.

As of the date of this Status Report, the City has not yet issued a Request for Proposal for its 2020 Fire Captain promotional examination but will need to do so in the near future.

It came to light during a recent telephone conference between the parties that they are at a temporary impasse in settlement discussions, based on fundamentally different interpretations of the Court's March 12 Order.

Defendant's Interpretation of the Court's Order

Based on the Court's Order and the discussions with the Court leading to the Court's Order, Defendant understood: That it would provide documents regarding the conduct of the 2017 examination for review by Plaintiffs' expert; Plaintiffs' expert would review those documents; Plaintiffs would identify specific items, processes, or practices which could be improved during a 2020 examination process; and the City would, in turn, review those recommendations for possible inclusion in the promotion process.

Plaintiffs' believe that the Court's Order is significantly more expansive.

Plaintiffs' Interpretation of the Court's Order

Plaintiffs' position, on the other hand, is that Dr. Brink should be working with the City to develop its next promotional exam for Captains. Plaintiffs believe that, for settlement to be possible as to the development of a future exam, the parties must agree that: (1) Dr. Brink will work with the City and its vendor(s) on the City's plans for development, implementation, and scoring of its next promotional exam for Captain; and (2) the City will agree to pay for all costs associated with Dr. Brink's work during these efforts.

Plaintiffs are concerned about the risk of spending significant financial resources to have Dr. Brink conduct the type of analysis that would only be necessary for litigation: a complete assessment of all of the flaws in the 2017 examination process – a subject Plaintiffs believe should be tabled until settlement efforts are exhausted. Plaintiffs asked Dr. Brink to opine on what he believes his role should be in settlement discussions. His belief is that some flaws from a past exam may apply to a future exam while other flaws will not. Thus, the best use of his time for purposes of settlement as to a 2020 Captain's exam would be for him to provide oversight in the manner that he would if the case were in a posture where Plaintiffs have prevailed and the Court has ordered (or the parties have agreed) to this type of oversight.

Defendant does not agree that Plaintiffs' position is consistent with the Court's March 12, 2020 Order.

Accordingly, the parties seek the Court's guidance on how this process should proceed, and, specifically, as to the role of Dr. Brink in these discussions and efforts.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **JOINT STATUS REPORT** has been served on all parties via the Court's electronic filing system.

May 15, 2020
Date

s/ Patrick J. Hoban
One of the Attorneys for Defendant